

### **REMARKS**

This responds to the Office Action dated July 12, 2005, and the references cited therewith.

Claims 1, 11, 18, and 22 are amended. Claims 1-25 are now pending in this application.

#### **§102 Rejection of the Claims**

Claims 1, 3-6, 11, 13-18 and 22-25 were rejected under 35 U.S.C. § 102(e) as being anticipated by Erb et al. (U.S. Patent No. 6,436,119). Applicant notes that Erb is a reference under 102(e) and Applicant reserves the right to swear behind the reference. Moreover, although applicant has amended claims 1, 11, 18, and 22, Applicant does not agree with the characterizations of the Erb reference on page 2 of the Office Action and Applicant reserves the right to traverse those characterizations in any continuation applications.

#### **Claims 1 and 3-6**

Applicant has amended claim 1 to positively recite an electrode lead in combination with the previous limitations. Applicant believes claim 1 is not anticipated by the cited reference since the reference does not include each limitation recited in the claim. For instance, Applicant cannot find in the cited reference, “an electrode lead”, or a “holding member adapted to hold an end of the electrode lead such that the end of the lead can be pulled through the elongated tube,” as recited in claim 1.

Claims 3-6 include each limitation of their parent claim and are therefore also not anticipated by the cited reference. Reconsideration and allowance is respectfully requested.

#### **Claims 11 and 13-17**

Applicant has amended claim 11 to positively recite an electrode lead in combination with the previous limitations. Applicant believes claim 11 is not anticipated by the cited reference since the reference does not include each limitation recited in the claim. For instance, Applicant cannot find in the cited reference, “an electrode lead”, or “a holding member adapted to hold an end of the electrode lead to pull the electrode lead through the elongated tube.”

Claims 13-17 depend from claim 11. Reconsideration and allowance is respectfully requested.

Claim 18

Applicant has amended claim 18 to positively recite an electrode lead in combination with the previous limitations. Applicant believes claim 18 is not anticipated by the cited reference since the reference does not include each limitation recited in the claim. For instance, Applicant cannot find in the cited reference, “an electrode lead”, or “an elongated rod having a holding member on one end, the holding member adapted to hold an end of the electrode lead.” Reconsideration and allowance is respectfully requested.

Claims 22-25

Applicant has amended claim 22 to positively recite an electrode lead in combination with the previous limitations. Applicant believes claim 22 is not anticipated by the cited reference since the reference does not include each limitation recited in the claim. For instance, Applicant cannot find in the cited reference, “an electrode lead”, or “an elongated rod having a lead holding member on one end.” Claims 23-25 depend from claim 11. Reconsideration and allowance is respectfully requested.

Claims 1-5, 11-15, 17-19 and 22-24 were rejected under 35 U.S.C. § 102(b) as being anticipated by Waldvogel (U.S. Patent No. 5,061,245). Although applicant has amended claims 1, 11, 18, and 22, Applicant does not agree with the characterizations of the Waldvogel reference on pages 2-3 of the Office Action and Applicant reserves the right to traverse those characterizations in any continuation applications.

Claims 1-5

Applicant has amended claim 1 to positively recite an electrode lead in combination with the previous limitations. Applicant believes claim 1 is not anticipated by the cited reference since the reference does not include each limitation recited in the claim. For instance, Applicant cannot find in the cited reference, “an electrode lead”, or a “holding member adapted to hold an

end of the electrode lead such that the end of the lead can be pulled through the elongated tube,” as recited in claim 1.

Claims 2-5 include each limitation of their parent claim and are therefore also not anticipated by the cited reference. Reconsideration and allowance is respectfully requested.

Claims 11-15 and 17

Applicant has amended claim 11 to positively recite an electrode lead in combination with the previous limitations. Applicant believes claim 11 is not anticipated by the cited reference since the reference does not include each limitation recited in the claim. For instance, Applicant cannot find in the cited reference, “an electrode lead”, or “a holding member adapted to hold an end of the electrode lead to pull the electrode lead through the elongated tube.”

Claims 12-15 and 17 depend from claim 11. Reconsideration and allowance is respectfully requested.

Claims 18-19

Applicant has amended claim 18 to positively recite an electrode lead in combination with the previous limitations. Applicant believes claim 18 is not anticipated by the cited reference since the reference does not include each limitation recited in the claim. For instance, Applicant cannot find in the cited reference, “an electrode lead”, or “an elongated rod having a holding member on one end, the holding member adapted to hold an end of the electrode lead.” Claim 19 depends from claim 18. Reconsideration and allowance is respectfully requested.

Claims 22-24

Applicant has amended claim 22 to positively recite an electrode lead in combination with the previous limitations. Applicant believes claim 22 is not anticipated by the cited reference since the reference does not include each limitation recited in the claim. For instance, Applicant cannot find in the cited reference, “an electrode lead”, or “an elongated rod having a lead holding member on one end.” Claims 23-24 depend from claim 22. Reconsideration and allowance is respectfully requested.

Claims 1, 8-10, 11 and 20-22 were rejected under 35 U.S.C. § 102(b) as being anticipated by Clarke (U.S. Patent No. 3,871,379). Although applicant has amended claims 1, 11, 18, and 22, Applicant does not agree with the characterizations of the Clarke reference on page 3 of the Office Action and Applicant reserves the right to traverse those characterizations in any continuation applications.

Claims 1 and 8-10

Applicant has amended claim 1 to positively recite an electrode lead in combination with the previous limitations. Applicant believes claim 1 is not anticipated by the cited reference since the reference does not include each limitation recited in the claim. For instance, Applicant cannot find in the cited reference, “an electrode lead”, or a “holding member adapted to hold an end of the electrode lead such that the end of the lead can be pulled through the elongated tube,” as recited in claim 1.

Claims 8-10 include each limitation of their parent claim and are therefore also not anticipated by the cited reference. Reconsideration and allowance is respectfully requested.

Claim 11

Applicant has amended claim 11 to positively recite an electrode lead in combination with the previous limitations. Applicant believes claim 11 is not anticipated by the cited reference since the reference does not include each limitation recited in the claim. For instance, Applicant cannot find in the cited reference, “an electrode lead”, or “a holding member adapted to hold an end of the electrode lead to pull the electrode lead through the elongated tube.”

Claims 20-21

Claims 20-21 depend from parent claim 18. Amended claim 18 is not anticipated by the cited reference since claim 18 recites “an electrode lead”, or “an elongated rod having a holding member on one end, the holding member adapted to hold an end of the electrode lead.” Reconsideration and allowance is respectfully requested.

Claim 22

Applicant has amended claim 22 to positively recite an electrode lead in combination with the previous limitations. Applicant believes claim 22 is not anticipated by the cited reference since the reference does not include each limitation recited in the claim. For instance, Applicant cannot find in the cited reference, “an electrode lead”, or “an elongated rod having a lead holding member on one end.” Reconsideration and allowance is respectfully requested.

Claims 1, 3-5, 8-10, 11-15 and 17-24 were rejected under 35 U.S.C. § 102(b) as being anticipated by Fogarty et al. (U.S. Patent No. 5,690,648).

Claims 1, 3-5, and 8-10

Applicant believes that claim 1 is not anticipated by the cited reference since the reference does not include each and every claim element arranged as in the claim. “Anticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, arranged as in the claim.” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)).

For instance, Applicant cannot find in the cited reference an elongated rod having a holding member on one end and dimensioned to fit within the elongated tube, the holding member adapted to hold an end of the electrode lead such that the end of the electrode lead can be pulled through the elongated tube, as recited in claim 1. In contrast, the Fogarty reference does not give any indication that the device can be used to pull the end of an electrode lead through an elongated tube.

Claims 3-5 and 8-10 include each limitation of their parent claim and are therefore also not anticipated by the cited reference. Reconsideration and allowance is respectfully requested.

Claims 11-15 and 17

Applicant believes that claim 11 is not anticipated by the cited reference since the reference does not include each and every claim element arranged as in the claim. For instance,

Applicant cannot find in the cited reference a tunneling rod extending from a handle end to a tip end, wherein the elongated tube is mountable around the tunneling rod, the tunneling rod for inserting the elongated tube subcutaneously; or a holding member adapted to hold an end of the electrode lead to pull the electrode lead through the elongated tube, as recited in claim 11. In contrast, the Fogarty reference does not discuss a tunneling rod at all and does not describe using a tunneling rod to insert trocar 22.

Claims 12-15 and 17 include each limitation of their parent claim and are therefore also not anticipated by the cited reference. Reconsideration and allowance is respectfully requested.

#### Claims 18-21

Applicant believes that claim 18 is not anticipated by the cited reference since the reference does not include each and every claim element arranged as in the claim. For instance, Applicant cannot find in the cited reference means for minimizing tunneling forces on the electrode lead as the electrode lead is pulled through a subcutaneous portion of a body by the holding member, as recited in claim 18. Again, the Fogarty reference does not give any indication that the device can be used to pull the end of an electrode lead through an elongated tube.

Claims 19-21 include each limitation of their parent claim and are therefore also not anticipated by the cited reference. Reconsideration and allowance is respectfully requested.

#### Claims 22-24

Applicant believes that claim 22 is not anticipated by the cited reference since the reference does not include each and every claim element arranged as in the claim. For instance, Applicant cannot find in the cited reference a lead holding member adapted to hold an end of the electrode lead located outside the first end of the elongated tube such that the end of the electrode lead can be pulled through the elongated tube to exit on the second end of the elongated tube, as recited in claim 22. Again, the Fogarty reference does not give any indication that the device can be used to pull the end of an electrode lead through an elongated tube.

Claims 23-24 include each limitation of their parent claim and are therefore also not anticipated by the cited reference. Reconsideration and allowance is respectfully requested.

§103 Rejection of the Claims

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Erb et al. (U.S. Patent No. 6,436,119), Waldvogel (U.S. Patent No. 5,061,245) and Clarke (U.S. Patent No. 3,871,379).

Claim 7 depends from claim 1 and is not obvious in view of the cited references since none of the cited references include the subject matter of the parent claim. For instance, “an electrode lead” is not found in any of the cited references. Reconsideration and allowance is respectfully requested.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 359-3267 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

GREGORY R. LEY ET AL.

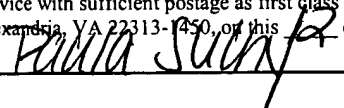
By their Representatives,

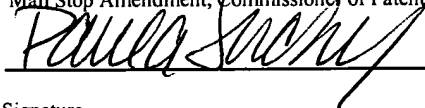
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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 12 day of October, 2005.

  
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